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REVIEW ESSAY

ASSESSING CALIFORNIA'S HYBRID
DEMOCRACY

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Professor Rick Hasen

REVIEW ESSAY

ASSESSING CALIFORNIA'S HYBRID DEMOCRACY

THE COMING OF AGE OF DIRECT DEMOCRACY: CALIFORNIA'S RECALL AND BEYOND

By Mark Baldassare & Cheryl Katz

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paper.

DEMOCRACY BY INITIATIVE: SHAPING CALIFORNIA'S FOURTH BRANCH OF GOVERNMENT

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PARTY OF ONE: ARNOLD SCHWARZENEGGER AND THE RISE OF THE INDEPENDENT VOTER

By Daniel Weintraub

Sausalito, CA: Polipoint Press, 2007. Pp. 235. \$19.95

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INTRODUCTION

In the early part of this decade it appeared that California voters stood to use the devices of direct democracy—the initiative, referendum, and the recall—to take a more major role in crafting the state's public policy. After all, in 2003 California for the first time recalled a sitting governor, Gray Davis, and replaced him with actor-bodybuilder Arnold Schwarzenegger.¹ Schwarzenegger, a moderate Republican in a Democratic state, was able to win a plurality of votes in a ridiculously-crowded field of 135 candidates by promising to be “postpartisan”

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¹ For a detailed analysis of the 2003 recall, see *CLICKER POLITICS: ESSAYS ON THE CALIFORNIA RECALL* (Shaun Bowler & Bruce Cain, eds. 2005).

and to “blow up the boxes” in Sacramento by going directly to the voters when necessary to make important public policy changes.²

By the end of the decade, however, despite the promise of “hybrid democracy,”³ it appears that voters remain the junior partners in governance in the Golden State. Schwarzenegger’s boldest attempt to bypass the legislature and go directly to voters came in a special election he called in 2005. Though Schwarzenegger raised and spent \$56 million supporting his package of measures⁴ (out of a total of an astounding \$300 million spent on ballot measure activity in that election⁵), all of the measures that Schwarzenegger backed went down to defeat, some by large margins.⁶

The 2005 experience was not isolated. One lesson of this decade is that the devices of direct democracy remain too blunt and expensive as tools for anything but interstitial governance. While initiative supporters who have enough money can qualify just about anything for the ballot⁷ (and those without money

² See DANIEL WEINTRAUB, *PARTY OF ONE: ARNOLD SCHWARZENEGGER AND THE RISE OF THE INDEPENDENT VOTER* 61 (2007). Schwarzenegger secured the vote of 48.6% of voters in the 2003 recall election. See http://www.sos.ca.gov/elections/sov/2003_special/sum.pdf (last visited Feb. 16, 2008).

³ Beth Garrett coined the term in Elizabeth Garrett, *Hybrid Democracy*, 73 GEO. WASH. L. REV. 1096, 1097 n.7 (2005) (noting that Garrett’s colleague Matt Spitzer had used the term “mixed democracy” but that Garrett chose the term “hybrid” “to capture both Spitzer’s idea of a mixture and the notion of cross-fertilization”). Garrett saw three dynamics to hybrid democracy: “First candidate elections can be influenced by the presence of initiatives on the ballot....Second, democratic structures and the laws regulating elections are likely to be different in a Hybrid Democracy than in a wholly representative democracy...Third, Hybrid Democracy affects the policies that lawmakers adopt because they are aware that the political game includes the possibility of initiative and referendum. Strategic politicians, notably, Arnold Schwarzenegger, take advantage of Hybrid Democracy as they govern using the threat of initiatives as a bargaining tool.” *Id.* at 1098.

Though Baldassare and Katz repeatedly use the term “hybrid democracy” in their book, see e.g., MARK BALDASSARE & CHERYL KATZ, *THE COMING OF AGE OF DIRECT DEMOCRACY: CALIFORNIA’S RECALL AND Beyond* 1 (2008) (“California’s experience serves as an example of ‘hybrid democracy’ that could spread to other states”), they do not give credit for the term to Garrett.

⁴ CENTER FOR GOVERNMENTAL STUDIES, *DEMOCRACY BY INITIATIVE: SHAPING CALIFORNIA’S FOURTH BRANCH OF GOVERNMENT* 295 (2d ed. 2008).

⁵ *Id.* at 289.

⁶ WEINTRAUB, *supra* note 2, at 81.

⁷ CENTER FOR GOVERNMENTAL STUDIES, *supra* note 4, at 284 (“Says Fred Kimball of the signature-gathering firm Kimball Petition Management, ‘If you want to have your kid’s birthday as a holiday, give me a million and half dollars and I’ll at least get it on the ballot for people to vote on.’”).

can qualify nothing⁸), significant negative spending can derail many measures, even those that begin with popular support.⁹ Indeed, California voters went to the polls in statewide elections in this decade ten times, and by the time the decade ends in 2010 that number will reach thirteen.¹⁰ From 2002 through 2008 voters were asked to approve 63 ballot measures—43 voter initiatives¹¹ and 20 ballot measures proposed by the legislature.¹² California voters approved 18 of the 20 legislative ballot measures (the large majority of them bond measures), a 90% approval rate. But they approved only 14 of 43 initiatives, a rate of 32.5%.¹³ Proponents and opponents spent over \$1.3 billion on ballot measure-related activity in California in the 2000-2006 period.¹⁴

Despite this flurry of activity, California's governance appeared in shambles for much of the decade, with the biggest problem being the inability of the California legislature to approve a state budget under the state constitution's tough rule requiring two-thirds approval of budgets,¹⁵ leading the state in 2008 to the verge of financial collapse.¹⁶ Moreover, the initiative process proved especially divisive in 2008 when California voters narrowly approved Proposition 8, a measure amending the California Constitution to bar gay marriage.¹⁷ The

⁸ See *id.* at 169 (“The fact that no California initiative has relied exclusively on volunteers since 1982, and that very few have used volunteers at all, indicates the difficulty in organizing and sustaining a grassroots movement capable of collecting several hundred thousand signatures.”).

⁹ *Id.* at 299-300 (summarizing studies).

¹⁰ California voters voted in March 2002 (state primary), November 2002 (general election), October 2003 (recall election), March 2004 (state primary), November 2004 (general election), November 2005 (statewide election), June 2006 (state primary), November 2006 (general election), February 2008 (state primary), and November 2008 (general election). See 2009 Ballot Measure Update, http://www.sos.ca.gov/elections/elections_j.htm (last visited Feb. 16, 2009). A special election will be held in May 2009 to consider measures necessary to implement California's draconian budget cuts. Primary and general elections are scheduled in 2010. These figures do not include additional local elections.

¹¹ I include in this category four voter-initiated referendums considered at the February 2008 election. See http://www.sos.ca.gov/elections/sov/2008_primary/12_official_declaration.pdf.

¹² The author compiled these statistics by examining the record of the vote in the elections from 2002 through 2008 posted at http://www.sos.ca.gov/elections/elections_elections.htm (last visited Feb. 18, 2009).

¹³ Removing the four referenda from the totals, see *supra* note 11, the approval percentage falls to 10 of 39 measures, or 25.6%.

¹⁴ Figures are not yet available for the three 2008 elections.

¹⁵ See CAL. CONST., ART. IV, § 12(4)(d).

¹⁶ See Jennifer Steinhauer, *California, Almost Broke, Nears Brink*, N.Y. TIMES, Feb. 17, 2009, <http://www.nytimes.com/2009/02/18/us/18calif.html>.

¹⁷ The text of the measure, the ballot arguments, and legislative analysis are at <http://www.voterguide.sos.ca.gov/title-sum/prop8-title-sum.htm> (last visited Feb. 20, 2009).
 Proposition 8 passed with 52% of the vote.

measure faced a post-election challenge in the California Supreme Court¹⁸ and large street protests,¹⁹ and there were reports of harassment of those who financially supported the measure.²⁰

The one bright spot so far this decade is the 2008 passage of Proposition 11, a measure that takes the job of redistricting out of the hands of legislators and gives the power to a group of citizens.²¹ Proposition 11 is far from perfect—its Rube Goldberg machinery for the appointment of citizen redistricters makes me very nervous²²—but its passage shows a potential path for using direct democracy to cure some of the structural defects in California's system of governance. As I discuss in Part IV below, governmental reform may be the greatest potential use of California's hybrid democracy, and the unheralded success of this decade.

Before turning to the question of the future, it is worth looking back at the lessons from this decade. The three very worthy books under review offer different angles on hybrid democracy in California at the beginning of the new century, and they each offer lessons on how direct democracy might be used in the future to improve California governance. Daniel Weintraub's portrait of Governor Schwarzenegger's term in office shows the limits of a "postpartisan" governor attempting to bypass the legislature through the initiative process.²³ The Center for Governmental Studies (CGS) offers a comprehensive overview of the initiative process in California and a smorgasbord of reforms.²⁴ Baldassare and Katz paint a portrait of California voters and their views about the initiative process.²⁵ Together, these books show both the promise and limits of hybrid democracy in California.

http://www.sos.ca.gov/elections/sov/2008_general/7_votes_for_against.pdf (last visited Feb 20, 2009).

¹⁸ Jesse McKinley, *Top Lawyer Urges Voiding Proposition 8*, N.Y. TIMES, Dec. 19, 2008, <http://www.nytimes.com/2008/12/20/us/politics/20marriage.html>.

¹⁹ Jessica Garrison, *Angrier Response to Prop. 8 Arises*, L.A. TIMES, Nov. 13, 2008, <http://articles.latimes.com/2008/nov/13/local/me-prop813>.

²⁰ Brad Stone, *Slipstream: Prop. 8 Donor Website Shows Disclosure is 2-Edged Sword*, N.Y. TIMES, Feb. 7, 2009, <http://www.nytimes.com/2009/02/08/business/08stream.html>.

²¹ The text of the measure itself, as well as the official summary and arguments in favor and against Proposition 11 appear at <http://www.voterguide.sos.ca.gov/title-sum/prop11-title-sum.htm>.

²² Here's a simplified version of the procedure as contained in the measure's title and summary: "Requires government auditors to select 60 registered voters from applicant pool. Permits legislative leaders to reduce pool, then the auditors pick eight commission members by lottery, and those commissioners pick six additional members for 14 total." *See id.*

²³ WEINTRAUB, *supra* note 2.

²⁴ CENTER FOR GOVERNMENTAL STUDIES, *supra* note 4.

²⁵ BALDASSARE & KATZ, *supra* note 3.

I. THE SCHWARZENEGGER LESSON

Weintraub, a journalist and opinion columnist for the *Sacramento Bee*, offers a very readable and insightful portrait of Governor Schwarzenegger. Like Schwarzenegger, Weintraub's politics are centrist and to some extent postpartisan,²⁶ and his reading of Schwarzenegger's rise to the governorship is mostly sympathetic. The portrait that emerges of Schwarzenegger is of an earnest individual, egotistical but without guile, who succeeded in attaining the American dream and who sought the governorship out of a Kennedyesque commitment to public service (Schwarzenegger is married to a Kennedy, journalist Maria Shriver). Schwarzenegger began life by believing everyone should pull themselves up by his own bootstraps, until he recognized that government help was sometimes necessary because some people in this country "do not have boots."²⁷

Schwarzenegger comes across in Weintraub's book as a personification of the median California voter, liberal on social issues, conservative on fiscal issues, and ready to rail against the "special interests" with their hold on Sacramento politics.²⁸ But more than anything, Schwarzenegger comes across as naïve about the ability of his "party of one" to get anything done in California.

The lesson that Schwarzenegger appeared to take away from the successful 2003 recall was that of unlimited "people power." But the recall power is essentially a negative one that California voters have exercised only rarely²⁹ to force *some* change to the system. Getting positive change, especially given structural impediments to change in the California Constitution, is much harder. Even with Schwarzenegger's bully pulpit (and his continuing ability to use his movie-star aura to attract large crowds), he has been limited in his ability to harness people power either directly through the initiative process or indirectly through a threat to the legislature to go around them to the people to get what he wanted

²⁶ See WEINTRAUB, *supra* note 2, at 2 ("Like Schwarzenegger, I am not wedded to the views of any one political party. I have been a registered Republican and a registered Democrat, and am currently registered with no party at all.").

²⁷ *Id.* at 14.

²⁸ Schwarzenegger's "entire campaign was built around the idea that 'special interests' had taken control of the government. 'Money goes in,' he said, 'favors go out and the people lose.' Carrying a broom to rallies around the state, he pledged to sweep the influence peddlers from the Capitol and restore the power to the people." *Id.* at 32.

²⁹ There have been 118 attempts in California to recall elected officials. Only five have been successful, the most recent being the recall of Governor Davis in 2003. http://www.sos.ca.gov/elections/sov/2003_special/contests.pdf.

Schwarzenegger had an early success in 2004 getting workers compensation reform through the legislature under the threat of an initiative bypass.³⁰ But his subsequent attempts at hybrid democracy have been much less successful. He tried to run to the right of the California legislature by supporting a series of budget reform and other measures in a special election he called for 2005. Even the calling of the special election itself was controversial, given its cost and voter fatigue (with two elections in 2002, a recall in 2003, and two more in 2004). The measure drew heavy opposition from Democrats and unions, with the California Teachers Federation levying a surcharge on its members to raise over \$50 million to be spent against the measures.³¹ Schwarzenegger's overheated rhetoric against his opponents (he referred to the Democratic legislative leaders as "girlie men"³²) did him no good in burnishing his postpartisan credentials.

After that \$300 million election, Schwarzenegger professed that he had learned his lesson. "I have always relied on people and listened very carefully to the people....And that's something that you have to do when you're in the movie business...If one of the movies goes in the toilet, you know that was the wrong story, that's not the kind of movie you like to do....So I've learned from that and the people sent a message to us that, 'Don't come to us with all your stuff...Work it out at the Capitol.' And so that's exactly what we're going to do."³³

But "working it out in the Capitol" proved far more difficult than the statement suggested. Schwarzenegger lurched somewhat to the left after the 2005 election and before his reelection bid in a majority-Democratic state, choosing former Democratic Party activist Susan Kennedy as his new Chief of Staff.³⁴ But if Schwarzenegger was trying to make peace on his left with Democrats he had new-found problems on his right with Republicans. Though Schwarzenegger easily won reelection in 2006 as a Republican incumbent against a weak Democratic candidate, Phil Angelides,³⁵ he had little luck getting Republicans in the state legislature to sign on to his programs.

Nowhere were the problems greater than with the state budget. Each year's budget battle was worse than the last, with things coming to a head in 2008, when a \$42 billion budget deficit led to state worker furloughs, massive budget cuts, and the state forced to issuing "I.O.U.'s" for income tax refunds. Though under California's two-thirds budget requirement it took the votes of only three

³⁰ *Id.* at 64-65.

³¹ WEINTRAUB, *supra* note 2, at 80, 106.

³² *Id.* at 74.

³³ *Id.* at 85 (quoting Schwarzenegger).

³⁴ *Id.* at 44.

³⁵ *Id.* at 138.

Republican Senators and three Republican Assembly members along with all the Legislature's Democrats to pass a drastic budget cutting and temporary tax hike to close the budget cap, Schwarzenegger struggled to seal the deal with his fellow Republicans. Ultimately, Schwarzenegger and the Democrats gave into a series of demands by a holdout Republican senator to eliminate a proposed gas tax increase and to put a number of ballot measures on the ballot, including a measure asking voters to establish a "top two" primary in California.³⁶

Weintraub's book ends after the 2006 election, and that is a shame, as some of Schwarzenegger's toughest battles have come since then. (I hope that Weintraub will write a revised edition after 2010, when the entire Schwarzenegger era may be assessed.) At the end of 2006, Schwarzenegger appeared as a phoenix rising from the ashes of the 2005 special election, ready to do renewed battle against the ever-shifting class of special interests. That Schwarzenegger could win in a landslide election in 2006 is a testament to the force of his personality; after all, here was a politician who claimed he was too rich to be bought yet who raised over \$300 million for his various campaign committees, much of it in six-figure donations from major corporate interests.³⁷ Voters rejected all the proposals he brought to the ballot in 2006, and he seemed to have little influence over members of his own party. Schwarzenegger nonetheless remained popular, except among more partisan Democrats and Republicans; but as the sole member of the party of one, his alliance with "the people" has not proved to be up to the battle against the state legislature and the strong interest groups in the state. As I suggest in Part IV below, it is too early to assess the overall success of the Schwarzenegger administration. His greatest legacy may be in the area of political reform.

II. IMPROVING THE CALIFORNIA INITIATIVE PROCESS

The Weintraub book is one that a political junkie would take for a day at the beach. That's not true of CGS's tome, *Democracy by Initiative: Shaping California's Fourth Branch of Government*. First, the book clocks in at over 400

³⁶ Kevin Yamamura, Aurelio Rojas and Jim Sanders, *Budget Plan Goes to Schwarzenegger After Legislature's OK*, SAC. BEE, Feb. 20, 2009, <http://www.sacbee.com/topstories/story/1636911.html>. ("As part of [Senator] Maldonado's agreement, lawmakers approved measures asking voters to approve constitutional amendments to establish an open primary system and ban legislative pay increases during deficit years. But legislative leaders refused to grant him his proposal to eliminate legislative pay altogether when the budget is late.... Leaders also agreed to Maldonado's demand to eliminate the 12-cent additional gas tax.... The money will be replaced with a 0.25 percent increase in the state income tax rate, federal stimulus dollars and more than \$600 million in line-item vetoes.").

³⁷ *Id.* at 63.

oversized pages, and would be too bulky for a beach bag. More importantly, the second edition of CGS's work on the California initiative process lacks the drama and personality of the Schwarzenegger story aptly told by Weintraub.

But the CGS book is worthy of close and serious study by those interested in the workings and dysfunctions of the California initiative process. Almost every aspect of the process gets scrutiny in this work, from the rules on qualifying measures for the ballot, to campaign financing, to the Secretary of State's website, to media coverage of initiatives, to the scope of the initiative power. No question is too big or too small for this volume, from whether California voters should be allowed to "revise" rather than simply "amend" the state constitution (yes³⁸) to whether there should be a mix of serif and sans serif typeface used in the ballot pamphlet to improve readability (also yes³⁹).

CGS proceeds from a progressivist tradition, accepting the "people power" notion behind the original impetus for direct democracy, and seeking to return the California initiative process to the grassroots. The main message of the book appears to be about getting enough (and the right) information to voters to make informed decisions about how to vote on ballot measures. Thus, the book argues that (1) money plays too great of a role in both the qualification process and ballot measure elections, especially given one-sided spending for some initiatives;⁴⁰ (2) the press does not do a good job adequately and fairly covering ballot measure issues;⁴¹ and (3) the Secretary of State's office needs to do a better job in communicating relevant information to voters, especially through Internet-based technologies.⁴²

The analysis along these lines is somewhat unsatisfying, for two reasons. First, the book makes a number of unstated assumptions about how voters respond to information, advertising, and cues in the ballot measure process. That is, the recommendations in the communications area will seem sensible only if one already has adopted the CGS worldview about the role that campaign advertising

³⁸ CENTER FOR GOVERNMENTAL STUDIES, *supra* note 4, at 228.

³⁹ *Id.* at 246.

⁴⁰ *Id.* at 13, ch. 8. As Matsuska notes, the CGS volume does a good job pointing readers to the relevant scholarly literature. He notes that after citing Dan Lowenstein's work on one-sided spending, the book "then also alters to reader to a recent series of papers, some unpublished, that question the conventional view based on larger data sets and more sophisticated empirical techniques than were employed by the first generation of research." John Matsusaka, *Initiatives: Slouching Toward Respectability?*, 8 ELECTION L.J. 55, 57 (2009).

⁴¹ *Id.*, ch. 7.

⁴² *Id.*, ch. 6. CGS is more satisfied with some other aspects of the process. For example, it supports the current means by which judges review initiatives for violation of the single-subject rule. See *id.* at 330. I am much more skeptical of the use of the single-subject rule. See Richard L. Hasen, *Ending Court Protection of Voters from the Initiative Process*, 116 YALE L.J. POCKET PT 115 (2006).

and money play in ballot measure elections. If one does not accept the world view, there is little in the book to convince a reader that it is the correct reading.

More importantly, the authors propose a series of changes to California's initiative process that are of dubious constitutionality. For example, CGS advocates a \$100,000 contribution limit in ballot measure campaigns (with a \$10,000 limit to candidate-controlled ballot measure committees), as well as a limit on total expenditures spent by ballot measure committees supporting or opposing a measure.⁴³ Aside from the limit on contributions to candidate-controlled committees, these other measures are likely unconstitutional.⁴⁴ Along similar lines, CGS advocates a return to the "Fairness Doctrine" in the context of ballot measure elections, requiring broadcaster to cover both sides of ballot measure campaigns and to give some free advertising to make up for one-sided advertising in a ballot measure election.⁴⁵ The Obama administration does not appear poised to revive the Fairness Doctrine.⁴⁶ Even if it did, I would not want to be on the side of the Doctrine before the Roberts Court.⁴⁷

It is not that the authors believe that their proposals would pass constitutional muster; they are clear that there are serious constitutional doubts with some of their proposals. But the authors did not take the next step, and argue for potential changes that might be on more solid constitutional footing. For example, the authors reject as unworkable or impractical a public financing program for ballot measures.⁴⁸ Yet they offer nothing else that could deal with the problem of large spending (or one-sided spending) in ballot measure elections.

The one area missing from the otherwise-comprehensive analysis of the California initiative process relates to the potential for the process to produce anti-minority legislation.⁴⁹ Proposition 187 (and anti-undocumented workers measure)

⁴³ CENTER FOR GOVERNMENTAL STUDIES, *supra* note 4, at 307-09.

⁴⁴ See Richard L. Hasen, *Rethinking the Unconstitutionality of Contribution and Expenditure Limits in Ballot Measure Campaigns*, 78 S. CAL. L. REV. 899 (2005). CGS relies heavily on my article to argue for the constitutionality of all of these measures, though I think they paint the possibility of constitutionality of spending limits and general contribution limits in a much brighter way than I did in my article.

⁴⁵ CENTER FOR GOVERNMENTAL STUDIES, *supra* note 4, at 272-74.

⁴⁶ See John Eggerton, *Obama Restates Opposition to Return to Fairness Doctrine*, Broadcasting and Cable, Feb. 18, 2009, http://www.broadcastingcable.com/article/174455-Obama_Restates_Opposition_to_Return_of_Fairness_Doctrine.php.

⁴⁷ For a look at the Roberts Courts views of First Amendment doctrine in the analogous campaign finance context, see Richard L. Hasen, *Beyond Incoherence: The Roberts Court's Deregulatory Turn in FEC v. Wisconsin Right to Life*, 92 MINN. L. REV. 1064 (2008)

⁴⁸ CENTER FOR GOVERNMENTAL STUDIES, *supra* note 4, at 313-14.

⁴⁹ Matsusaka also faults the book for "the absence of any connection between [CGS's] reform agenda and the serious problems facing the state." Matsusaka, *supra* note 40, at 57. Though the book does not deal with these interconnections, CGS is otherwise doing so, including through co--

and Proposition 209 (an anti-affirmative action measure) get barely a mention in the book. (The book's publication preceded the passage of Proposition 8, banning gay marriage in the California Constitution). Though CGS mentions Julian Eule's important argument that courts should more closely scrutinize initiative measures because they lack the usual legislative filters that can protect minority rights,⁵⁰ they do not do anything with it. It is as though their Progressive vision has blinded them to the real possibility that true voter interests may sometimes be to trample minority rights.

Overall, however, the book is extremely valuable. Anyone thinking about reforming the California initiative process should begin with the CGS volume and its careful and comprehensive approach to initiative reform.

III. SATISFYING THE VOTERS

Like the Weintraub book, Baldassare and Katz's *The Coming of Age of Direct Democracy*⁵¹ covers the period from the California recall through the 2006 elections. Like the CGS book, the Baldassare and Katz volume does not make good beach reading. But the book stands as a clear and comprehensive record of California public opinion leading up to and through the first term of the Schwarzenegger administration. Baldassare is the President and Chief Executive Officer of the Public Policy Institute of California (PPIC), which runs one of the most respected polling operations in the state.

The thesis of the book is that California has moved toward a "hybrid democracy," with an ever-increasing role for the initiative process in the state. The authors claim that "[a] new system of governance has evolved in California over five elections in a half-decade of furious political activity. An era of a 'hybrid democracy is now underway, with elected officials and voters at the ballot box jointly sharing responsibility for making public policy.'⁵² They further state that this "is not a temporary trend, as all indications point to permanent power sharing between representative government and direct democracy."⁵³

With the benefit of just a bit more hindsight than was available since this book was published, the Baldassare and Katz claim appears exaggerated. It is too much to say that voters and the legislature "jointly share responsibility" for

organizing meetings on a potential constitutional convention for the state. See http://www.bayareacouncil.org/docs/CCC_Agenda.pdf.

⁵⁰ *Id.* at 320-22 (citing Julian Eule, *Judicial Review of Direct Democracy*, 99 YALE L.J. 1506 (1999)).

⁵¹ Baldassare & Katz, *supra* note 3.

⁵² *Id.* at 219.

⁵³ *Id.*

making public policy in California, at least any more than has been true historically. The 32.5% approval rating of ballot measures from 2002 through 2008⁵⁴ is actually lower than the period in the 1980s, when 48% of initiatives were approved,⁵⁵ or the 1990s, when 39% were approved.⁵⁶ The same is true of the number of initiatives approved: 21 approvals in the 1980s,⁵⁷ 24 in the 1990s,⁵⁸ and 14 from 2002 to 2008.⁵⁹ Nor do the authors make the case that the initiatives approved in this decade were qualitatively more important than those in earlier decades. The main difference between earlier decades and this decade is the California recall and the current governor's professed desire to use the devices of direct democracy. The recall is not likely to be repeated any time soon, and Governor Schwarzenegger's attempts to harness "people power" to bypass the legislature have not proven to be very successful.

The main benefit of the Baldassare and Katz book is that it offers detailed and interesting PPIC polling data for the 2000s, especially regarding voters' views on the initiative process. Consistent with the approach of the CGS book, California voters like the initiative process, but are concerned about the role of money in the process and the potential for voter information overload.

Thus, in August 2006, 71% of likely voters in California "said they were satisfied with the way the initiative process is working in California today,"⁶⁰ a trend that crossed party lines and demographic groups.⁶¹ Similarly, in 2005, 42% of likely voters said that initiative should have the greatest influence on policy in California, compared to 35% for the legislature and 16% for the governor.⁶²

Nonetheless, in 2004, 35% of adults thought the initiative process needed "major changes,"⁶³ almost the same percentage when the question was asked in 2000.⁶⁴ "More than six in ten adults (62%) and likely voters (61%) said there generally were too many propositions on the ballot."⁶⁵ In addition, 65% of likely voters "believed that special interests had 'a lot' of control over initiatives."⁶⁶ In

⁵⁴ See *supra* note x.

⁵⁵ CENTER FOR GOVERNMENTAL STUDIES, *supra* note 4, at 6.

⁵⁶ *Id.*

⁵⁷ *Id.* at 61.

⁵⁸ *Id.*

⁵⁹ See *supra* note x.

⁶⁰ BALDASSARE & KATZ, *supra* note 3, at 31.

⁶¹ *Id.*

⁶² *Id.* at 157.

⁶³ *Id.* at 121.

⁶⁴ *Id.* at 122 ("when we last asked this question in October 2000, 32 percent of Californians said major changes were needed and 43 percent called for minor changes in the initiative process.").

⁶⁵ *Id.* at 158.

⁶⁶ *Id.*

November 2006, 56% of voters “strongly agreed that too much money was spent by the initiative campaigns.”⁶⁷

The especially interesting thing about voter opinion on the initiative process in California is how steady it has been throughout the decade, even given the unusual circumstances of the 2003 gubernatorial recall and a governor committed to the initiative process as a matter of ideology and policy.⁶⁸ California voters liked the process whether they agreed with the governor and his initiative agenda or not, and that trend is likely to continue in California after Schwarzenegger leaves office.

IV. THE ROAD AHEAD

Despite the hoopla about Governor Schwarzenegger as a “party of one” and a new age of “hybrid democracy” in California, the pattern in the 2000s appears mostly the same as that of past decades: California voters have occasionally passed important measures through the initiative process, but for the most part public policy in the state continues to be crafted by the state legislature and the governor.

The best hope for increased “people power” through the initiative process is for initiative proponents to focus on good government measures that assure a better legislative process, such as open primaries, redistricting reform, and budget reform.⁶⁹ Historically, about 21% of voter initiatives have involved government

⁶⁷ *Id.* at 207.

⁶⁸ In a survey conducted by PPIC after the November 2008 elections, Mark Baldassare et al., *Californians & Their Government*, PPIC Statewide Survey, December 2008, <http://www.ppic.org/main/publication.asp?i=860>, survey results were consistent. Approximately 67% of California voters were somewhat or very satisfied with the initiative process. *Id.* at 20. 35% of California voters believed major changes in the initiative process were necessary. *Id.* 51% of voters strongly agreed and 24% of voters somewhat agreed that too much money was spent on political campaigns. *Id.* at 21. 63% of voters strongly or somewhat agreed that the wording of initiatives on the state ballot was too confusing. *Id.* 52% of voters strongly or somewhat agreed that there were too many initiatives on the state ballot. *Id.*

PPIC also polled about some specific reforms. 77% of California voters favored a system of review and revision of proposed initiatives to try to avoid legal issues and drafting errors. The same margin favored a period of time in which the initiative sponsor and legislature could meet to see if there were a compromise solution before initiatives go on the ballot. Half the voters believed initiatives should be allowed only in November general elections, rather than also in primaries and special elections. *Id.*

⁶⁹ At the time of this writing, proponents were circulating an initiative in California to lower the threshold for legislative budget approval from two-thirds to 55%. See Mark Rothfield & Eric Bailey, *California's Budget Fiasco Legacy Could Be Reform*, L.A. TIMES, Feb. 20, 2009, <http://www.latimes.com/news/local/politics/cal/la-me-reform20-2009feb20.0.2561731.story>.

and the political process.⁷⁰ Already in this decade voters had considered more initiatives in this subject area than they had in any other decade since the establishment of the initiative in California.⁷¹

The fate of redistricting reform in the 2000s provides a good lesson for how initiatives may be used to enact political reform. Governor Schwarzenegger first backed a redistricting measure in 2005, Proposition 77, that Democrats widely viewed as a political power grab. Gubernatorial recall proponent Ted Costa sponsored the measure, and it the ballot pamphlet argument in favor of the measure was not signed by any of the major good government groups in California.⁷² The measure failed at the ballot box, garnering only 40% of the vote.⁷³ It was supported only by a majority of Republicans, but opposed by majorities of Democrats and independents.⁷⁴

Voters only supported redistricting reform when Governor Schwarzenegger teamed up with good government groups such as Common Cause,⁷⁵ and gave up on congressional redistricting, which had national partisan implications. Proposition 11, which appeared on the November 2008 ballot, squeaked by with 50.9% of the vote,⁷⁶ securing the support of 59% of Republicans and 54% of independents, though only 44% of Democrats.⁷⁷ Its passage illustrated a coalitional model that could be used for future good government reform. An open primary measure likely will rely heavily on independent voters, and budget reform on Democrats and independents. But the cooperation of good government groups and their “seal of approval” could be quite important.

The lesson of the 2000s, as told in various ways by these three books, is that California voters like the tools of direct democracy, but are generally judicious in which initiatives they are willing to approve. Though the public policy of the state cannot be directed primarily by the voters through plebiscitary democracy, voters can take steps to improve the system by which the legislature

⁷⁰ CENTER FOR GOVERNMENTAL STUDIES, *supra* note 4, at 64.

⁷¹ See *id.* (14 initiatives on government & political process in 2000-06, compared to less in each of the preceding decades back to 1912).

⁷² See http://vote2005.sos.ca.gov/voterguide/prop77/args_rebuttals.shtml.

⁷³ BALDASSARE & KATZ, *supra* note 3, at 163.

⁷⁴ *Id.* at 161.

⁷⁵ The ballot argument in favor of Proposition 11 (and rebuttal to the “no” argument) were signed by the League of Women Voters, AARP California, the California Taxpayer’s Association, California Common Cause, the Orange County Professional Firefighters Association, and the Los Angeles Area Chamber of Commerce.

⁷⁶ See http://www.sos.ca.gov/elections/sov/2008_general/7_votes_for_against.pdf. (last visited Feb. 20, 2009).

⁷⁷ Baldassare et al., *supra* note 67, at 13.

and governor make policy. If Schwarzenegger leaves office with the passage of redistricting reform, primary reform, and budgetary reform, these would be significant accomplishments. That's a more modest version of "hybrid democracy," but one that is a more realistic vision of what voters can accomplish.